IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN,UNDER ARBITRATION ACT. No 36 of 1998

with
PETIN.UNDER ARBITRATION ACT NO.38 OF 1998

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDIAN HUME PIPE COMPANY LTD.

Versus

GUJARAT INDUS.DEVELOPMENT COR.

Appearance:
MR GT DAYANI for Petitioner
MR MB GANDHI for Respondent No. 1

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR
Date of decision: 21/01/2000

ORAL JUDGEMENT

In both the petitions, a prayer is made for appointment of arbitrator.

My attention was invited by the learned counsel for the petitioner to clause 30 of the contract, relevant part of which reads as under :

"30. Disputes to be referred to arbitrator:

The disputes relating to this contract, so far as they refer to any of the following matters whether such disputes arise during the progress of the work or after the completion or abandonment thereof shall be referred to the sole arbitration of the person who is holding or has held a post not below the rank of a Superintending Engineer under this Department of the State of Gujarat, namely:

x x x x x x "

It was asserted in the petition that a demand was made by the petitioner for appointment of an arbitrator by a notice dated March 25, 1998, but nothing was done by the opponents. It was,therefore, submitted that in accordance with the above clause, an arbitrator is required to be appointed.

A preliminary objection was raised on behalf of learned counsel for the respondent that the claim of the petitioner is time barred. In this connection, my attention was invited to an affidavit in reply. Another objection was also taken that the petitioner has to approach the Gujarat Public Works Contract Disputes Arbitration Tribunal in accordance with the provisions of the Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992 (hereinafter referred to as " Act of 1992").

So far as preliminary objection regarding limitation is concerned, as held by me in IAAP No.30 of 1998 decided on November 05, 1999, such question can be raised before an arbitrator but a petition cannot be dismissed by the Chief Justice on that ground.

Regarding availability of remedy under the Act of 1992, it was contended by the learned counsel for the petitioner that a similar question is already decided by the Tribunal holding that in respect of such contracts, the Tribunal has no jurisdiction. I do not express any opinion on that aspect. Said question also can be agitated before an arbitrator.

So far as clause 30 of the contract is concerned, it is abundantly clear. In these circumstances, sole arbitrator is required to be appointed. In this connection, in para 19 of the affidavit in reply,the Executive Engineer of GIDC has stated thus:

> "It is submitted in the alternative that even if the Honourable Court comes to the conclusion that the application is maintainable and it is in time, then in that case, the Superintending Engineer is named as the arbitrator in clause 30 and , therefore, the respondent herein names Mr. R.J.Suthar as the sole arbitrator under the said clause 30 and his appointment be made by this Honourable court. It is clarified that the respondent herein does not concede to the appointment of the arbitrator however, subject to the contentions which are raised above, if the Honourable court rejects all the contentions only then, this alternative plea of the respondent be accepted."

In the light of the aforesaid discussion and affidavit-in-reply, Mr. R.J. Suthar, Superintending Engineer is ordered to be appointed as the sole arbitrator. His address will be supplied to the learned counsel for the petitioner by the respondents.

Petitions are accordingly disposed of. I may state that in Petition No. 38 of 1998, an identical question was raised. But it appears that there was some error in giving number while filing the affidavit in reply. It is, however, not disputed that work regarding supply of 1200 mm dia PSC pipes refers to and it is a contract having clause 30 regarding arbitration.

Both the petitions are, therefore, allowed. Mr. R.J.Suthar, Superintending Engineer is appointed as the sole arbitrator. No order as to costs.

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